IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 205 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? YES

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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PREMILABEN WIDOW OF DASHRATH BHAI MOTIBHAI NAIK - Appellant(s)
Versus
BACHURAO JADAV & 2 - Defendant(s)

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Appearance :

MR NILESH A PANDYA for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.
NOTICE NOT RECD BACK for Defendant(s) : 3,
MR V.C. Thomas for Mr. PV NANAVATI for Defendant(s) : 3,
MR VIBHUTI NANAVATI for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 05/07/2007

ORAL JUDGMENT

Premilaben, widow of Dashrathbhai Motibhai

Naik, appellant, original claimant, has filed this appeal under the provisions of Section 30 of the Workmen's Compensation Act, against the judgement and order dated 30.7.2003 passed by the Workmen's Compensation Commissioner, Vadodara, in Workmen's Compensation Application No. 87 of 1997 whereby the learned Judge was pleased to reject the application of the applicant mother of the deceased on the ground of not dependant of the deceased.

2 Heard Mr. Nilesh Pandya, learned advocate appearing on behalf of the appellant. He has submitted the following facts which emerge from the record.

3. Premilaben, appellant, and Dashrathbhai Motibhai Naik happen to be mother and father of deceased Naresh Dashrath Naik. Deceased Naresh Dashtrath was aged 18 years. He was working with respondent No. 2 as Conductor-cum-Cleaner of the Luxury bus. Respondent No. 1 was driver of the bus and respondent No. 3 is the Insurance Company of the bus. The appellant submits that on 18.3.1986 there

was a trip of vehicle from Vadodara to Mathura. At that time, near Krishna Police Station, Mathura (Uttarpradesh) when the son of the appellant was unloading the luggage which is kept on the top of the bus, due to the electrical over-head high tension wire on the roof of the bus, her son expired.

4. The appellant also contended that at the relevant time her son was receiving Rs. 2,000/- as salary from respondent No. 2 and he was aged 18 years at the time of the incident.

5. After the incident, both father and mother addressed a notice dated 28.2.1997 to respondent No. 2 for obtaining compensation with interest and penalty. Thereafter, before the respondents could give reply to the notice for compensation, the father of deceased Naresh Dashrath expired on 12.4.1997. Thereafter, on 4.12.1997, as the father of deceased Naresh expired, the mother Premilaben filed Workmen Compensation Application No. 87 of 1997 before the Workmen's Compensation Commissioner, Vadodara, under the Workmen's Compensation Act for claiming

compensation against all the three respondents.

6. The learned Commissioner under Workmen's Compensation Act, Vadodara, after hearing the parties, rejected the application on the ground that in this case the accident occurred on 18.3.1996 and the father of deceased Naresh and husband of the appellant expired on 12.4.1997. Therefore, the applicant was not widowed mother on the date of accident or on the date of death of her son - deceased workman. The learned Commissioner for Workmen's Compensation has stated that there is neither a pleading nor proof regarding dependency of the applicant on the earning of the deceased.

7. Being aggrieved by and dissatisfied with the aforesaid judgement and order, the appellant had originally filed Civil Revision Application before this Court under Section 115 Code of Civil Procedure. However, after the deletion of Section 115 of the C.P.C., the appellant has converted the same under Article 227 of the Constitution of India and thereafter the present appeal has been filed before

this Court. The appellant has made the following submissions:

8. Mr. Pandya, learned advocate for the appellant, has submitted that the term “dependant” has been defined in Section 2(1)(d) of the Act which reads as follows:

> “ `dependant' means any of the following relatives of a deceased workman, namely,
> (i) a widow, a minor (legitimate or adopted) son, and unmarried (legitimate or adopted) daughter or a widowed mother; and
>
> (ii) if wholly dependant on the earnings of the workman at the time of his death, a son or daughter who has attained the age of 18 years and who is infirm;
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> (iii) if wholly or in part dependant on the earnings of the workman at the time of his death -
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> (a) widower,
> (b) a parent other than a widowed mother”

9. The learned advocate for the appellant has

submitted that it is an admitted fact that son was earning and both the parents were “dependants” on the deceased because he happened to be the only son and the parents were also staying with him. Both the parents were dependant on the earning of their son. The learned Commissioner for Workmen's Compensation has not properly considered the definition of “dependant” on the facts of the case because in this case the accident took place on 18.3.1996. On the said date both father and mother were living together. In fact, the parents have addressed a joint notice on 8.2.1997. However, unfortunately on 12.4.1997, the father of the son expired and therefore, the application was filed on 4.12.1997 only by the mother of the deceased. The learned Commissioner for Workmen's Compensation ought to have considered that when the date of accident occurred and the deceased died, the parents were living together and they were depending on their son. The definition “dependant” is very wide enough to include parents of the deceased.

10. Mr. Pandya, learned advocate for the

appellant has relied on the judgement of the Madhya Pradesh High Court in the case of RAMJI AND ANOTHER VS. LALIT KUMAR BARDIYA AND OTHERS reported in 1995 ACJ 877. The Court (Coram: D.M. Dharmadhikari, J as he was then) in paragraph Nos. 7 and 8 on page 880 has observed as under:

> "para 7 – The relevant clause, defining the word "dependant" keeping in view the object of the Act and the facts as found here, cannot be assigned a restricted meaning to include in the said expression only such parents who have actually received benefit fully or partly from the earnings of the deceased and to exclude such parents who in natural and normal course would have received such benefit from the earnings of the deceased, but for some act or omission or cause attributable to the employer are deprived of such benefits from the deceased workman.
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> Para 8 - In my considered opinion to fulfill the avowed object of the act, <u>which is a beneficial legislation,</u> the parents, who did not get any advantage from the earnings of the deceased but were entitled to receive the same in normal circumstances, are included in the relevant

definition clause of the word “dependant”. Non-payment of wages due to the deceased deprived the parents of the benefit of the earnings of the deceased who was living jointly with them during his lifetime. His death deprived them of his monetary support for all times in future. Such parents should be held intended to be included in the definition of dependant under the sub-clause mentioned above. Any other interpretation would wrought great injustice on the parents on the parents who were deprived by the employer of the benefit of the earnings of the deceased workman, who was not paid his dues towards wages in his life-time, in comparison with such parents who actually received such benefit.”

11. I have considered the facts and circumstances of the case. I have also considered the definition “dependant”. I have also considered the judgement of the Madhya Pradesh High Court in the case of Ramji and Another Vs. Lalit Kumar Bardiya & others (supra).

11.1 In my view the order of the learned Judge rejecting the application on the ground that the

mother is not dependant on the son, that the applicant was not widowed mother on the date of accident or on the date of death of deceased workman is erroneous and contrary to the definition of the word “dependant” in the Act. The learned Commissioner for Workmen's Compensation has taken a very narrow meaning of the word “dependant”.

11.2 The Tribunal ought to have asked whether the parents of the dependant were alive on the date of death and they were really dependants on the earning of the son on the date of the accident on 18.3.1996. It is no doubt true that the application has been filed by the widowed mother but the date of application is not relevant, the date of accident i.e. 18.3.1996 is relevant and whether at that time the parents were dependants on the deceased. That is a real question to be considered. As pointed out in the judgement of Ramji and another Vs. Lalit Kumar Bardiya and others (supra), the word “dependant” cannot be assigned a restricted meaning to include in the said expression which has been considered by the learned Commissioner for Workmen's Compensation that

on the date of death of deceased workman the appellant was not a widowed mother.

11.3 In my view the parents who are in natural and normal course would have received benefits from the earnings of the deceased would also fall within the definition of “dependant” as per the provisions of the Act. In my considered view to fulfill the avowed object of the Act, the parents who did not get any advantage from the earnings of the deceased but were entitled to receive the same in normal circumstances, are included in the relevant definition clause of the word `dependant'. Non-payment of wages due to the deceased, deprived the parents of the benefit of the earnings of the deceased who was living jointly with them during his lifetime. His death deprived them of his monetary support for all times in future. Such parents should be held intended to be included in the definition of the “dependant” under the sub-clause mentioned above. Any other interpretation would work great injustice on the parents who were deprived by the employer of the benefit of earnings of the deceased workman.

11.4 In my view as per the definition the parents have to establish relationship mentioned therein and further that they are wholly or in part dependant on the earning of the deceased at the time of his death. In my view, therefore, the application is to be allowed.

11.5 It has been contended by the appellant that the workman was earning Rs. 2000/- per month. However, the respondent has contended that he was given only Rs. 1,500/- as monthly salary. In view of this fact, this Court holds that the workman was getting Rs. 1500/- as monthly salary at the time of his death and as per the provisions of the Workmen's Compensation Act, the compensation will be calculated at the rate of 50% of the monthly salary of the deceased workman multiplied by the relevant factor as per Schedule IV attached to Section 4 i.e. Rs. 750 x 226.38 which comes to Rs. 1,69,785/-.

11.6 In view of the same, the appeal is allowed. Mr. Nilesh Pandya, learned advocate for the appellant

has stated that the claimant is entitled to interest on the said amount from 30.7.2003 when the Commissioner has ultimately decided the application.

12. When I have to construe the definition of the word “dependant”, I have to take into consideration the date of accident i.e. 18.3.1986. On that day both father and mother were alive and therefore they fall within the definition of “dependant”. It is no doubt true that father of the deceased Naresh Dashrath Naik expired on 12.4.1997 and thereafter on 4.12.1997 the mother of deceased Naresh Dashrath Naik filed the present application. The learned Judge has taken into consideration the date of filing of application on 4.12.1997 but that date is not relevant. The real date is the date of accident. In support of the same, I rely on the judgment of this Court in the case of General Manager, Western Railway, Bombay vs. Lala Nanda reported in 1985 ACJ 57 decided by S.B.Majmudar, J. (as he was then). In that case the workman in Railways suffered employment injury on 11.10.1971 resulting in permanent disablement of left eye

rendered him totally unfit to work as pointsman. The Compensation rates enhanced in Schedule IV by Amendment Act 65 of 1976 with retrospective effect from 1.10.1975. The Commissioner directed the employer to pay compensation as per enhanced rates of amended Schedule IV. In that context the question arose before the Court that whether the revised rates of compensation as per amended Schedule IV is applicable to cases not settled when the Amending Act came into force. In that context the learned Judge has considered entire provisions of the Act including the amendment and in para 15 on page 64 the Court observed like this:

12.1A “These provisions also indicate that liability of the employer gets crystalised on the day on which accident injuries are suffered by the concerned workman. The computation of liability, therefore, has to be made in the light of the existing rates of compensation as found in Schedule IV at the time when the accidental injuries take place. If employer fails to discharge his obligation to pay compensation as per the Act, he becomes liable to be proceeded

against before the Commissioner. Section 10-A (1)(2)(3) read with sections 19(1) and 22 also indicate that the liability of employer gets crystalised on the date of the accident to the concerned workman and the employer is required to meet the said liability as per the procedure and time schedule laid down in these provisions. In fact various statutory provisions of the Act to which I have referred represent a well knit scheme regulating the rights and liabilities of injured workmen and their employers respectively, fulcrumed round the occurrence of the accident on a given date. As indicated by section 10(1), such application for compensation can be filed before the Commissioner within two years from the date of occurrence of the accident or the death, as case may be. Even while such applications are filed within limitation, computation of compensation has to be made by the Commissioner with reference to the date on which the Act foisted the liability on the employer to pay compensation and created corresponding

right in the employee to receive this compensation. If merely because the Commissioner takes some time to decide the application and in the meantime, the rates of compensation as mentioned in Schedule IV got revised upward ipso facto, it cannot be said that they become applicable to pending proceedings unless the Amending Act shows a different legislative intention."

12.1B Thereafter in para 30 particularly clause 3 on page 74 the Court observed like this:

"(3) If, however, accidental injuries are suffered by injured workman prior to 1.10.1975 and if any applications are filed for getting compensation in connection with those injuries, whether such claim applications are filed prior to 1.10.1975 or after that date, and whether such applications were pending on 21.5.1976 or whether they were not so pending on account of the fact that they had got disposed of prior thereto or that they were filed after 21.5.1976, they will have to be decided in

the light of the old unamended Schedule IV as applicable at the time the accidental injuries were actually suffered by the concerned workman."

12.1C Thereafter in para 31 on page 75 the learned Judge has observed like this:

"As a result of the aforesaid discussion, it must be held that in the light of the facts and circumstances of this case, amendment to Schedule IV as effected by Amending Act 65 of 1976 cannot be pressed in service by the respondent-workman for computing compensation payable to him for the employment injury suffered by him on 11.10.1971. He would be entitled to get compensation as per old rates as reflected by the then existing Schedule IV. As already mentioned earlier, the amount would be Rs.9,800/- and not Rs.23,520/- as awarded by the Commissioner. The present appeal will, therefore, be allowed and the award of the Commissioner will have to be modified downwards by substituting figure of

Rs.9,800/- in the place and stead of Rs.23,520/- as mentioned in the Commissioner's award. Direction as to 6% interest from the date of the application till realisation of course has to remain untouched."

12.2 In this behalf I also refer to Full Bench judgment of Kerala High Court in the case of **United India Insurance Co. Ltd., vs. Alavi, reported in 1998 ACJ 1048.** In that case the Full Bench of Kerala High Court in para 13 on page 1055 and para 17 on page 1057 has observed as under:

12.2A "We may also notice that various High Courts while dealing with the claims for compensation under the Workmen's Compensation Act, have uniformly taken the view that the relevant date for determining the rights and liabilities of parties is the date of the accident. The Gujarat High Court in General Manager, Western Railway v.Lala Nanda, 1985 ACJ 57 (Gujarat), the Bombay High Court in Margardia Gomes v.

Mackinnon Mackenzie & Co. Ltd., AIR 1968 Bom 328, Allahabad High Court in Saraswati Press vs. Nand Ram, 1971 ACJ 316 (Allahabad), Jammu & Kashmir High Court in Vijay Ram vs. Janak Raj, 1981 ACJ 84 (J&K), Rajasthan High Court in Ramlal vs. Regional Manager, Food Corporation of India, 1981 Lab IC 1281, etc., have taken the same view."

12.2B "Right to claim compensation as well as the obligation to pay the same are created by the statute itself. It is well settled rule of interpretation that if the law is procedural, there is, no doubt, a presumption that it applies to pending proceedings."

13.3 The Full Bench of Kerala High Court has held that material date is the date of accident and on that date the rights of the parties crystallised and amendment does not seek to alter the liability of employer as it stood on the date of accident.

12.4 It may be noted that the Hon'ble Apex Court in the case of Kerala State Electricity Board vs.

Valsala K. which I have referred earlier reported in 2000 ACJ 5, in para 5 referred to the aforesaid decision of Kerala High Court has made following observations in para 5 on page 6 as under. The Hon'ble Apex Court has approved the Full Bench judgment of the Kerala High Court.

> "... The decision of the Full Bench of the Kerala High Court, to the extent it is in accord with the judgment of the larger Bench of this Court in Pratap Narain Singh Deo v. Shrinivas Sabata, 1976 ACJ 141 (SC), lays down the correct law and we approve it."

13. In view of the aforesaid discussion particularly judgement of this Court in the case of Lala Nanda (supra), Full Bench judgment of Kerala High Court in the case of **United India Insurance Co. Ltd., vs. Alavi** (supra) and in view of the judgement of the Hon'ble Supreme Court in the case of Kerala State Electricity Board vs. Valsala K. (supra) the date of interpretation of definition of "dependant" is the date on which the accident arose and therefore also the present appeal is to be allowed as the learned Judge has not taken into consideration that point.

14. In this case it is no doubt true that the application was filed and the application was rejected. Therefore, the liability accrued to the appellant not from the date i.e. 30.7.2003 when the application was rejected by the Commissioner but when this Court allows the appeal the employer and the contractor are liable to pay interest to the appellant. As per Section 34 of the Code of Civil Procedure, 1908, the employer and the Insurance Company are liable to pay interest at the rate of 12%from today i.e. the date on which the appeal is allowed till the payment. This Court directs the Insurance Company to deposit the said amount within two months from the date of receipt of writ of this Court. Writ may be sent forthwith.

(K.M. MEHTA, J)

(pkn)